Supreme Court, U.S.
FILED
JUN 26 2000
CLERK

(4)

No. 99-1520

In the
Supreme Court of the United States

TRIBAL GOVERNING BOARD OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS,

Petitioner,

vs.

SANDRA THOMAS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF TO BRIEFS IN OPPOSITION

LARRY LEVENTHAL AND
ASSOCIATES
Larry B. Leventhal
Counsel of Record
David L. Garelick
Suite 420, Sexton Building
529 South Seventh Street
Minneapolis, Minnesota 55415
(612) 333-5747

Attorneys for Petitioner

2000 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

28pp

QUESTION PRESENTED

Whether an American Indian Tribe, having interest in the continuity of its Tribal Constitution, is a necessary party, pursuant to Fed. R. Civ. P. 19, in an action by private parties contesting the validity of the Tribe's Constitution?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

I. AS THE TRIBE'S CONSTITUTIONALLY ELECTED GOVERNMENTAL BODY, THE LAC COURTES OREILLES TRIBAL GOVERNING BOARD IS A NECESSARY PARTY. 1

A. Core Principles of Federal Indian Law Affirm the Tribal Governing Board's Constitutional Obligation to Protect the Interests of the Tribe and its Members. 1

B. The Statutory Scheme at Issue Recognizes the Integral Role of Tribal Government in Secretarial Elections 4

C. The Statutory Scheme Governing Secretarial Elections Does Not Purport to Preempt Necessary Party Analysis. 6

II. THE DECISION OF THE SEVENTH CIRCUIT CONFLICTS WITH SEMINOLE TRIBE V. FLORIDA, 517 U.S. 44 (1996) AND FLORIDA V. SEMINOLE TRIBE, 181 F.3D 1237 (11TH CIR. 1999) 9

CONCLUSION 10

APPENDIX B-1

TABLE OF AUTHORITIES

Cases

Fisher v. District Court, 424 U.S. 382 (1976) 5

In re Mayfield, Petitioner, 141 U.S. 107 (1891) 9

Florida v. Seminole Tribe, 181 F.3d 1237 (11th Cir. 1999) 10

Kiowa Tribe v. Manufacturing Techs., Inc., 523 U.S. 751 (1998) 6

Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1972) 5

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) 3, 10

Seminole Tribe v. Florida, 517 U.S. 44 (1996) 9, 10

Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt, 906 F. Supp. 513, 516 (D. Minn. 1995) 4

Talton v. Mayes, 163 U.S. 376 3

Williams v. Lee, 358 U.S. 217 (1959) 5

Federal Rules of Civil Procedure

Fed. R. Civ. P. 19 ..... 6, 7

Statutory Authorities

25 U.S.C. § 461 et seq. 3

25 U.S.C. § 476(a)(1) 4

25 U.S.C. 476(d)(1) 8

25 U.S.C. 476(d)(2) 4

25 U.S.C. § § 1301-03, 1321-26, 1341 10

28 U.S.C. § 1254(1) 2

Federal Regulations

25 C.F.R. Part 81 3

25 C.F.R. § 81.5 4

25 C.F.R. § 81.8 4

25 C.F.R. Part 82 5

25 C.F.R. § 82.5 5

Tribal Authorities

Amended Constitution and Bylaws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians

Constitution

Article I, Section 4 1

Article III, Section 1 3

Article IV 1

Bylaws

Article I, Section 4 1

Secondary Authorities

Felix Cohen, Handbook of Federal Indian Law (1982 ed.) 3

Felix Cohen, Handbook of Federal Indian Law (1942) 2, 3

Vine Deloria, Jr. and Clifford M. Lytle, American Indians, American Justice (1983 University of Texas Press) 5

4 Moore's Federal Practice § 19.03[4](d) 7

I. AS THE TRIBE'S CONSTITUTIONALLY ELECTED GOVERNMENTAL BODY, THE LAC COURTE OREILLES TRIBAL GOVERNING BOARD IS A NECESSARY PARTY.

A. Core Principles of Federal Indian Law Affirm the TGB's Constitutional Obligation to Protect the Interests of the Tribe and its Members.

Plaintiffs Sandra Thomas et al. (hereinafter "Plaintiffs") argue not only that the Tribal Governing Board ("TGB") is not a necessary party, but that it has no interest in the present litigation because the only party with any interest is the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("LCO" or "Tribe") *"by the LCO people directly."* Brief of Respondents Sandra Thomas, et al. in Opposition (Plaintiffs' Br.) at 17-21, 25-26. They also dismiss any interest of the TGB by arguing that provisions of the Tribe's Constitution are not at issue because *"the LCO people"* have voted. Id. at 13. However, Plaintiffs forget this litigation presents a legitimate question as to whether the proper people voted. On October 7, 1992, the Department of the Interior, through then-Acting Assistant Secretary for Indian Affairs, David Matheson, ("Assistant Secretary") found the election to be invalid because the proper people did not vote. Pet. 3, A-69-70.[1]

The TGB has the responsibility of representing the day-to-day interests of the Tribe under its Constitution.[2] The role of membership is primarily that of electing the TGB and voting at elections concerning constitutional amendments or referendums.[3]

---

[1] Plaintiffs' argument to dismiss the action of then-Assistant Secretary Matheson is, in part, based on their conclusion that blood quantum membership provisions are racist, unacceptable and cannot be considered. See Plaintiffs' Br. at 22-24. Thus, Plaintiffs' argument rests on the principle that the Constitution, as adopted by the Tribe, and approved by the Secretary of the Interior, is per se illegal and unenforceable. Plaintiffs' assertion that "no one is contesting the validity of the LCO constitution, . . ." is disingenuous, at best. Further, Plaintiffs argue that the TGB should not be able to argue the Tribe's Constitution because they did not mention it in their Complaint. If that were true, constitutional protections would mean nothing.

[2] The Tribe's Bylaws provide at Article I, Section 4(Board Members): "It shall be the duty of the Board members to promote the general welfare to the Band and carry out the provisions and purposes of this Constitution and Bylaws.

[3] Article IV of the Tribe's Constitution governs elections. Pet. A-77 – 78.

The position of the LCO TGB is that the proper people did not vote. If, indeed, there is a prima facie case that the proper people did not vote, the issue cannot be circumvented by rhetoric.

The Federal Respondents, on the other hand, acknowledge, in their reframing of the question,[4] that the election at issue involves ratifying amendments to the Tribe's constitution. Brief of Federal Respondents in Opposition (Fed. Respondents Br.) at I. It would seem beyond dispute that such an election impacts Tribal interests. The amendments at issue purport to change both the definition of tribal membership and the length of the terms of TGB members. Yet, it is the revised and current position of the United States,[5] as well as that of Plaintiffs,[6] that the TGB does not have the type of interest that would make it a necessary party to the present litigation.[7] Well established principles of Federal Indian law are to the contrary.

A tribe has the power "to determine and define its own form of government." Felix Cohen, Handbook of Federal Indian Law, Chap. 7, § 3, p. 126 (1942). This power is "[t]he first element of sovereignty, and the last which may survive successive statutory

---

[4] Federal Respondents state the question presented as follows: "Whether a Tribe's governing body is a necessary party to a suit by a voter challenging the Secretary of the Interior's decision under 25 U.S.C. 416 (sic) to nullify the results of an election ratifying amendments to the Tribe's constitution."

[5] The arguments presented by the Federal Respondents in their brief, dated August 31, 1998, submitted to the United States Court of Appeals for the Seventh Circuit in this matter were diametrically opposed to their current position. See Appendix herein at B-9 - B-17. Therein, the Federal Respondents argued that the District Court properly determined that the TGB is not only a necessary party, but an indispensable party. Id.

[6] Both parties direct considerable attention to restating factual specifics. The Petitioner does not necessarily agree with these presentations in all respects. However, the factual circumstances giving rise to the Petition for Certiorari are specified within Petitioner's original Statement of the Case. Pet. 2-5.

[7] Contrary to the Federal Respondents' assertion that there is some question whether the TGB may properly invoke this Court's certiorari jurisdiction under 28 U.S.C. 1254(1) (Fed. Respondents' Br. at 6 note at asterisk), the Seventh Circuit essentially determined the TGB did have an interest, but that said interest did not convey necessary party status. The Court of Appeals, however, stated there were several manners in which the TGB could participate, i.e., a petition to intervene or as *amicus curiae*. It would be rather contradictory to view the TGB as not having the necessary status to seek certiorari.

limitations of Indian tribal power." Id. LCO adopted a constitutional form of government, organized under provisions of the Indian Reorganization Act of 1934, 25 U.S.C. 461 et seq. ("IRA"). Although Congress expressly sanctioned the exercise of tribal powers under IRA constitutions, the tribes adopting such continue to exercise their unextinguished powers of sovereignty, which predate the United States Constitution.[8] Thus, the IRA "had little or no effect upon the substantive powers of tribal self-government vested in the various Indian tribes. . ." Cohen, supra, Chap. 7, § 3 at 128.

In exercising their unextinguished powers of tribal self-government, Tribal membership, in adopting the LCO Constitution, have prescribed the TGB as the authoritative organ of government through which tribal acts are given the character and authority of group action. Indeed, the Tribe's Constitution provides at Article III, Section I that "[t]he governing body of the Band shall be the Governing Board composed of seven (7) members." Accordingly, the TGB is directly responsible for serving and protecting the interests of the Tribe and its members.

Despite the clear constitutional charter given the TGB as the elected governing body of the Tribe, the Federal Respondents and the Plaintiffs (collectively hereinafter, unless further qualified, "Respondents") assert that Tribal Government has no voice where Secretarial Elections are concerned. Respondents, however, leave a void by presuming that the election was correct, and that the TGB steps out of bounds if it challenges the procedure. In fact, a Secretarial Election cannot be presumed to be conducted properly. Regulations for conducting Secretarial Elections are provided at 25 C.F.R. Part 81. Further, the TGB is responsible as the duly elected governmental body, to ensure the integrity of proper conduct of all affairs involving the Tribe, including elections that may change the Tribe's Constitution. Membership here achieves expression through the TGB.

---

[8] Felix Cohen, Handbook of Federal Indian Law, Ch. 4, § C1, p. 247-48 (1982 ed.), citing Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66 n.22 (1978) (the court spoke only of inherent, not delegated, tribal powers when the tribe had adopted a constitution under the Indian Reorganization Act); see also Talton v. Mayes, 163 U.S. 376 (1896).

B. The Statutory Scheme at Issue Recognizes the Integral Role of Tribal Government in a Secretarial Election.

If Secretarial Elections are not conducted properly, it is well within the role of the TGB to question the procedure. In this case, the TGB clearly did not make a spurious claim. The Assistant Secretary, in accordance with the Department's trust responsibility to the Tribe, questioned the Secretarial Election and declared the process invalid because the proper class of voters did not vote. Plaintiffs argue that the TGB has been "bypassed" entirely by "*the LCO people directly*" (Plaintiffs' Br. 17, 25) in this matter and, thus, cannot respond as a necessary party arguing the correctness of the actions of the Assistant Secretary, when the Plaintiff's joined the TGB to their lawsuit. Of course, such a result undermines the role of tribal government. It defies common sense to suggest that an election challenge would more properly be made by several thousand tribal members collectively making submittals.

An election occurs as a one-time event. The TGB would be neglecting its constitutional responsibility by remaining silent when it suspects proper election procedures have not been followed where the large majority of those voting were ineligible. Further, this is well understood within the federal regulations promulgated pursuant to 25 U.S.C. § 476(a)(1)[9] regarding the basic procedures for proposing constitutional amendments. As the regulations governing Secretarial Elections provide, amendment proposals may be initiated by a Tribe's governing body, or by a Tribe's membership via a petition. See 25 C.F.R. § 81.5. Additionally, 25 C.F.R. § 81.8 provides for an election board, including "at least two representatives of the tribal governing body or an authorized representative committee . . ." to conduct elections. Thus, the very

---

[9] The procedures for calling and approving an election to amend a tribal constitution are codified in the IRA at 25 U.S.C. § 476. Pet. A-3. The requirements of the Secretary of the Interior's elections regulations are found at 25 C.F.R. § 81. Pet. A-61. These federal regulations are promulgated pursuant to 25 U.S.C. § 476(a)(1) which authorizes the Secretary to prescribe them. See Pet. A-61; see also Shakopee Mdewakanton Sioux (Dakota) Community v. Babbitt, 906 F. Supp. 513, 516 (D. Minn. 1995) (holding that the forty-five day time limit contained in 25 U.S.C. § 476(d)(2) is not triggered until the threshold requirement in § 476(a)(1) is satisfied; i.e., amendments to a Tribal Constitution must be ratified under the Secretary's rules).

regulations establishing procedures for administering the election clearly recognize the central role of the Tribe's governing body in the process, which is precisely what the proper application of the necessary party analysis should reflect. Respondents' assertions that the statutes and regulations at issue somehow mandate the absence of Tribal government in the Secretarial Election process stand in stark contrast to the foregoing provisions.

Plaintiffs' "power to the people" argument associated with the submittal of a petition (see Plaintiffs' Br. 17, 25, 28) attempts to extend the acknowledged right--of tribal members (as appropriately defined) to vote in a Secretarial Election--to a mandate that tribal government has no role in voicing criticism of the manner in which such an election is conducted. However, the regulations at 25 C.F.R. Part 82 also recognize the central role of Tribal Government in the amendment proposal process, stating at 25 C.F.R. § 82.5 that the numerical sufficiency of any petition is to be determined through "consultation with the tribal governing body."

Further, the foregoing regulations also comport with the purpose of the IRA, under which the Tribe organized and adopted its Constitution. The purpose of the IRA was to revitalize the status and authority of tribal governing bodies.[10] Indeed, the major thrust of the Act was "to minimize the enormous discretion and power exercised by the Department of the Interior . . .," with "[t]he focus of power" being "decentralized and moved from the Indian bureaucracy in Washington to the reservation governments."[11]

Respondents' argument that there is no conflict between the decision of the Seventh Circuit and caselaw ignores the intent of IRA. Indeed, the Federal Respondents discuss the IRA as though

---

[10] Fisher v. District Court, 424 U.S. 382, 387 (1976) (". . .the Indian Reorganization Act ... (is).... a statute specifically intended to encourage Indian tribes to revitalize their self-government"); Mescalero Apache Tribe v. Jones, 411 U.S. 145, 151-152 (1972) ("The Indian Reorganization Act . . . reflected a new policy of the Federal Government and . . . tribes were encouraged to revitalize their self-government through the adoption of constitutions and bylaws . . ."); Williams v. Lee, 358 U.S. 217 (1959) ("Not satisfied solely with centralized government of Indians [Congress] encouraged tribal governments and courts to become stronger and more highly organized").

[11] Vine Deloria, Jr. and Clifford M. Lytle, American Indians, American Justice 14-15 (1983 University of Texas Press).

it may be divorced from the principle of a tribe's retained powers of self-government. See Fed. Respondents' Br. 7, Meanwhile, "Plaintiffs agree *Tribes* have the right to determine their own membership, that Indian self-determination includes the right to define the conditions of membership, and that these are core tenets of Indian law." Plaintiffs' Br. 24. Yet, Plaintiffs appear to assert that individual tribal members may exercise such rights, but the duly constituted governing body of the Tribe may not. Clearly, Respondents' arguments that provisions of the IRA somehow short-circuit the TGB's duty to speak in a matter of fundamental importance to the Tribe would gut the intent of the Act.

Respondents' reliance on the Seventh Circuit's observation that the TGB can petition to intervene or participate as an *amicus curiae* also undermines the doctrine of sovereign immunity affirmed by this Court in Kiowa Tribe v. Manufacturing Techs., Inc., 523 U.S. 751 (1998). These alternatives require a Tribe to decide to waive sovereign immunity as a necessary precondition for pursuing tribal interests regarding Secretarial Elections.

C. The Statutory Scheme Governing Secretarial Elections Does Not Purport to Preempt Necessary Party Analysis.

Respondents attempt to deflect attention from a proper necessary party analysis, under Fed. R. Civ. P. 19, by arguing that the Tribe cannot be a necessary party because the Secretary of the Interior has the main responsibility in Secretarial Elections. This argument does not follow. Interestingly, apart from responding to Petitioner's claim that the Seventh Circuit impermissibly interjected an additional criterion into the Rule 19 analysis,[12] the

---

[12] In its opening brief to this Court, (Pet. 22-24), the TGB argued that the Seventh Circuit's Decision interjected an additional criterion into the Rule 19 necessary party analysis by implying that, in order to be considered a necessary party, the TGB would need to have first sued the Department of the Interior, seeking a judicial determination as to the Department's continued processing of the matter. Respondents attempt to rebut this claim by characterizing this as an "unremarkable conclusion." Fed. Respondents' Br. 9-10. Plaintiffs suggest that the TGB's failure to institute such an action should not allow it to leverage its position by taking advantage of Rule 19. Pl. Br. 24. However stated, the Seventh Circuit presents an additional element by providing that earlier action by the TBG would have been required, in addition to those stated within Rule 19, for it to be considered a necessary party. Plaintiffs dispute that the Seventh Circuit imposed

Plaintiffs shun a direct discussion of the necessary party analysis. Accordingly, Respondents' arguments primarily concern alleged impotency of the TGB, rather than the necessary party analysis.

Fed. R. Civ. P. 19 requires a two-step analysis to determine whether a party is necessary. The District Court correctly determined that "[u]nder Rule 19(a), the [TGB] is a necessary party . . ." Pet. A-55. Judge Crabb found (emphasis added)

> that the governing board is not a party in this action presents some problems. The proposed amendments dealt with matters of fundamental importance to the tribe. Moreover, should the BIA decision be reversed on the grounds advanced by the plaintiff tribal members, the BIA could be exposed to additional litigation if the governing board were to later bring suit against the BIA to re-instate its decisions for different reasons. See 4 Moore's Federal Practice § 19.03[4](d) (noting how Rule 19 protects "a party against inconsistent court order such that compliance with one might breach another"). Finally, although the dispute in this case involves an administrative decision made by federal officials pursuant to the Indian Reorganization Act, the governing board is not a disinterested bystander. It played a part in this story; indeed, plaintiffs' problems with the 1992 election began when plaintiff Sandra Thomas tried to have the governing board adhere to the membership-related amendment. Hence, even if the BIA decision is reversed and the 1992 results are reinstated, the governing board may frustrate efforts to enforce the amendments. These concerns all support a finding that the governing board is a necessary party. Pet. A-53-54

As recognized by the District Court, a party does not have to be a decisionmaker in order to be a Necessary Party. The Federal Defendants note that the Seventh Circuit based its decision partially upon the observation that Congress rejected a recommendation by

---

an additional criterion into the Rule 19 analysis, while asserting that, in 1992, "[m]embers of the TGB could have brought an action to test the approval by the Secretary under the IRA if they believed the Secretary's approval was in error." Pl. Br. 29. Thus, although Plaintiffs purport to say bringing a lawsuit is not an actual criterion, they are alleging it is a proper reason for the TGB not to be considered a necessary party. If so, it is an additional criterion.

the Department of the Interior to give Tribes the authority to decide election challenges in tribal forums. Fed. Respondents' Br. 7. It does not follow, however, from the Department's rejected recommendation that a tribe should be the decisionmaker where election disputes arise, that the Tribe should not be regarded as a Necessary Party because it is not the ultimate decisionmaker.

As noted above, the United States has done a complete about face with respect to the necessary party analysis. See n. 5, supra. In doing so, it abandoned positions that were more sensible and fully documented in favor of essentially stating a position and supporting it only with sparse citation. The U.S. argued to the Seventh Circuit, that the conclusion that the TGB is not only a necessary party but an indispensable party was "unavoidable" and "easily reached", stating within their brief:

> The impact of these amendments on the tribe and its governing board cannot be overstated. There is no question that the disposition of the present lawsuit in the absence of the governing board as a party would severely impair and totally impede the governing board's ability to protect the tribe's interest in its membership and in the length of the terms of its elected officials. . . . In support of their argument, [Plaintiffs] have characterized their claim against the BIA as involving nothing more than the procedural question of whether the BIA violated the 45-day time restriction in 25 U.S.C. § 476(d)(1) by revoking approval of the February 1, 1992 election more than eight months after the election. . . . Plaintiffs' argument is far-fetched and misguided. . . . The conclusion that the Lac Courte Oreilles TGB is a necessary party to the litigation of plaintiffs' claims is unavoidable and was easily reached by the district court. Pet. Reply Br. App. at B10 - 11, B12, and B12 -13.[13]

---

[13] With respect to the issue of the Tribe's indispensability, the United States formerly took the position that "[t]here can be no doubt that the district court's determination of indispensability was correct. First a judgment granting the declaratory and injunctive relief sought by plaintiffs would be prejudicial to the governing board's interests. Almost seven years have passed since the election, and Amendments A and B have never been implemented by the tribe. Obviously, a judgment reinstating the election results and amending the tribe's constitution to include Amendments A and B would not only affect directly the term lengths of the board members but would alter the requirements for membership in the Tribe. Courts, including the U.S. Supreme Court, have consistently recognized the

By way of contrast, the United States now argues that the Seventh Circuit's decision does not conflict with decisions of this Court affirming tribal self-government. The United States argues this point from its perception that the Seventh Circuit's decision that the TGB does not have an interest sufficient to be a necessary party was based on "the specific statutory scheme at issue," "and not the court's failure to apply the background principle that a Tribe retains its powers of self-government in the absence of limitation by Congress." Fed. Respondents' Br. 7. Curiously, the United States now relegates tribal powers of self-government it formerly placed in the foreground to the background on the basis of a procedural scheme for conducting Secretarial Elections. In doing so, the United States essentially embraces Plaintiffs' procedural argument that it once deemed "far-fetched and misguided." Pet. Reply Br., App. B-12. Further, such argument only ignores the purpose of the IRA, but the maxim that "[t]he acts of Congress which appear to limit the power of an Indian tribe are not to be unduly extended by doubtful interference." Cohen (ed. 1942), supra, at 122, citing In re Mayfield, Petitioner, 141 U.S. 107, 115, 116 (1891). Sadly, it appears that the United States' drastic revision of its former position is more a product of political considerations by federal agencies than responsive either to the issues in the case or its trust responsibility to the Tribe.

II. THE DECISION OF THE SEVENTH CIRCUIT CONFLICTS WITH SEMINOLE TRIBE V. FLORIDA, 517 U.S. 44 (1996) AND FLORIDA V. SEMINOLE TRIBE, 181 F.3D 1237 (11TH CIR. 1999).

The Respondents have not seriously addressed the conflict the Seventh Circuit decision presents with the decision of this Court in Seminole Tribe v. Florida, 517 U.S. 44 (1996) and that of the Eleventh Circuit, in Florida v. Seminole Tribe, 181 F.3d 1237 (11th Cir. 1999). Rather, the Federal Defendants summarily state that "[n]either case involved any question concerning the statutory scheme at issue here or Rule 19." Fed. Respondent's Br. 9.

---

paramount interest of Indian tries in all matters relating to membership, just as they have consistently recognized the sovereign immunity of tribes on such matters." Pet. Reply Br., Appendix at B-15.

Plaintiffs, on the other hand, allege that this Court's decision, in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), stands for the proposition that Congress may abrogate the sovereign immunity of Indian Tribes. Plaintiffs' Br. at 27. Thus, they reason, Seminole, 517 U.S. at 44, is distinguishable because therein this Court determined Congress did not have the power to abrogate the sovereign immunity of states. The reasoning is faulty.

In Santa Clara Pueblo, 436 U.S. at 49, this Court made it clear that tribal courts are the proper forums for the adjudication of individual claims regarding constitutional guarantees provided in the Indian Civil Rights Act (ICRA) of 1968, 25 U.S.C. § § 1301-03, 1321-26, 1341 (1978), except as otherwise provided in ICRA for habeas corpus actions when an individual is incarcerated. However, the issue in the instant matter does not concern the jurisdiction of an asserted cause of action.[14] The issue is whether the Tribe's Governing Body is a necessary party when joined in an action concerning a disputed Secretarial Election related to the Tribe's Constitution. Moreover, in Santa Clara Pueblo, this Court upheld, rather than diminished, the paramount right of Tribes to define and participate in matters of vital tribal concerns. No process was envisioned in Santa Clara Pueblo that would proceed without tribal involvement.

In Florida v. Seminole Tribe of Florida, 181 F.3d 1237 (11th Cir. 1999), the Eleventh Circuit held that a Tribe is subject to suit only where the tribe has waived its immunity or where Congress has authorized the suit. Further, as noted in the TGB's Petition to this Court, the Eleventh Circuit respected the fact that a Tribe's assertion of sovereign immunity may result in a lack of a federal forum to address an issue.

CONCLUSION

For the foregoing reasons and those presented in the Petition of the LCO TGB, a Writ of Certiorari should be granted.

---

[14] The TGB has never contended that the action cannot be brought in federal district court; it has contended that the Tribe is a necessary and indispensable party. Further, to say that the venue is federal district court says nothing about the abrogation of sovereign immunity. To assert otherwise is analogous to alleging that the existence of diversity jurisdiction bars defenses that may be raised once suit is brought to court, which, of course, is preposterous. The mere existence of federal jurisdiction reveals nothing about immunities that may be asserted in court.

Dated this 26th day of June, 2000

Respectfully submitted,

LARRY LEVENTHAL
& ASSOCIATES
Larry B. Leventhal
Counsel of Record
David L. Garelick
Suite 420 - Sexton Building
529 South 7th Street
Minneapolis, MN 55415
(612) 333-5747

Attorneys for Petitioner
TGB of the Lac Courte Oreilles Band of
Lake Superior Chippewa Indians

INDEX TO THE APPENDIX

Brief of Defendant-Appellees (federal respondents herein) in the United States Court of Appeals for the Seventh Circuit, No. 98-2329, dated August 31, 1998 (with Table of Authorities, Jurisdictional Statement, Statement of Issues and Standards of Review, and Argument Sections I, III and IV deleted).....B-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 98-2329

SANDRA THOMAS, et al, Plaintiff-Appellants, v. UNITED STATES OF AMERICA, et al., Defendant-Appellees.	Appeal from the United States District Court for the Western District of Wisconsin Case No. 96-C-828-C Honorable Barbara B. Crabb Presiding

BRIEF OF DEFENDANT-APPELLEES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

JURISDICTIONAL STATEMENT 1

STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW 2

STATEMENT OF THE CASE 3

STATEMENT CONCERNING ORAL ARGUMENT 10

SUMMARY OF ARGUMENT 11

ARGUMENT

I. THE STANDARD OF REVIEW SHOULD BE ABUSE OF DISCRETION 12

II. THE DISTRICT COURT PROPERLY DETERMINED THAT THE TRIBAL GOVERNING BOARD IS NOT ONLY A NECESSARY PARTY BUT AN INDISPENSABLE PARTY 13

III. THE DISTRICT COURT PROPERLY DETERMINED THAT THE LAC COURTE OREILLES TRIBAL GOVERNING BOARD AND ITS INDIVIDUAL MEMBERS ARE IMMUNE FROM SUIT 26

IV. THE DISTRICT COURT PROPERLY DETERMINED THAT PLAINTIFFS' BIVENS CLAIMS AGAINST DEFENDANTS BROWN AND MATHESON IN THEIR INDIVIDUAL CAPACITIES SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION 28

CONCLUSION .....

STATEMENT OF THE CASE

Brief Overview

This is a civil action brought by plaintiffs, who are members or ancillary members of the Lac Courte Oreilles Band of Lake Superior Indians, against the United States government and various present and former federal officials. (R. 2; R. 54, pp. 1-2; and R.56) The suit generally arises from two proposed amendments to the tribe's constitution which were the subject of an election held on February 1, 1992. (R. 2;, R. 54, pp. 1 and 7; and R. 56) Approximately eight months after the election, the Department of the Interior revoked approval of the election, finding that many of the tribal members who voted were not entitled to vote. (R. 54, p. 37; and Appellants' Appendix, A-57) Plaintiffs filed the present lawsuit seeking declaratory and injunctive relief reinstating the election results, compensatory damages and attorneys fees. (R. 2 and R. 54, p. 2)

The district court dismissed plaintiff's claims against defendants Brown and Matheson for lack of personal jurisdiction. (R. 54, pp. 14-16 and 24) The court further determined that the tribal governing board was a necessary party to the litigation of a plaintiffs' claims against the remaining federal defendants. (R. 54, pp. 19-25) Although plaintiffs then sought to join the tribal governing board and each of its individual members to the lawsuit by amending their complaint, the district court ultimately dismissed all of plaintiffs' claims against the governing board based on sovereign immunity and against the individual board members for lack of subject matter jurisdiction. (R. 56; and R. 66) The court further determined that the tribal governing board was an indispensable party to the litigation of plaintiffs' claims against the remaining federal defendants. (R. 66, pp. 12-18) Since the board was immune from suit and could not be joined, the court dismissed plaintiffs' claims against said federal defendants under F.R.Civ.P. 19. (R. 66, pp. 12-18 and 25)

Organization and Membership of the Lac Courte Oreilles Tribe

The Indian Reorganization Act, 25 U.S.C. §§ 461-479; offers tribes the opportunity to become self-governing, and that process starts when a tribe adopts a constitution. (R. 54, p. 3) The Lac Courte Oreilles Tribe adopted a constitution under the Act in 1966. (R. 54, pp. 4-5; and R. 28, ¶ 24)

Several amendments have been made since adoption, but as of 1992 the tribal constitution provided that Lac Courte Oreilles members comprise the following classes of individuals: (1) all persons of tribal blood who were listed on the tribe's 1940 census roll or were eligible to be included on that roll; (2) any lineal descendent of a member born before 1966; and (3) persons who have at least 1/4 tribal blood and have applied for membership under tribal ordinance. (R. 54, p. 5; and R. 28, ¶ 28) As of February 1992, the tribe had 4,378 members, of whom 3,659 were eligible to vote. Also, 1,127 persons were listed on the tribe's ancillary roll, which includes the children of Lac Courte Oreilles members who do not meet any of these membership requirements. (R. 54, p. 5; and R. 28, ¶ 57)

The Proposed Amendments

In the late 1980's, some Lac Courte Oreilles members began to consider amending the tribal constitution to change the structure of tribal government and the standards for tribal membership. (R. 54, p. 6 and R. 28, ¶ 37) In 1988, a committee was formed to explore the issue and plaintiff Sandra Thomas was named as the chairperson. (R. 54, p. 6; and R. 28, p. 43) Roughly three years of meetings and discussion resulted in four petitions for amendments that were circulated among the membership and sent to the local BIA office for approval. (R. 54, pp. 6-7 and R. 28, If 39) Plaintiff Sandra Thomas sponsored the petitions and served as the "Spokesman for the petitioners," pursuant to 25 C.F.R. § 82.1(o). (R. 54, p. 7 and R. 28, ¶ 43)

On November 5, 1991, the local BIA office approved two of the petitions and authorized an election. (R. 54, p. 7 and R. 28, p. 45) Proposed Amendment A eliminated the 1/4 Lac Courte

Oreilles blood membership requirement and enabled any descendant of a Lac Courte Oreilles member to gain membership. Proposed Amendment B extended the length of the terms of the tribal governing board members to four years. (R. 54, p. 7 and R. 28, ¶ 49 and Exhibit N)

The Election

The local BIA office set the election for February 1, 1992. (R. 54, p. 7) This was to be a "Secretarial election," defined in 25 C.F.R. § 81.2 as an election held pursuant to regulations prescribed by the Secretary of the Department of the Interior as authorized by Federal Statute (as distinguished from "tribal" elections which are conducted under tribal authority). (R. 54, p. 13.)

Prior to the date set for the election, registration packets were sent to the 3,659 voting-eligible Lac Courte Oreilles members, advising them of the election and informing them of the need to register. Responses were received from 1,130 Lac Courte Oreilles members who were registered. The election results were as follows: of the total 1,130 registrants, 650 cast votes (474 of which were by absentee ballot). Amendment A passed by a margin of 542 to 105 and amendment B passed by a vote of 373 and 274. (R. 54, p. 7; and R. 28, ¶¶ 59 and 63)

The Post-Election Proceedings

After the election, Gaiashkibos, who was then the chairman of the tribal governing board, questioned the results of the election but on February 10, 1992, the local BIA office approved the amendments and sent written notice to plaintiff Sandra Thomas, as spokesman for the petitioners, and to Gaiashkibos. (R. 54, pp. 7-8 and R. 28, ¶¶ 66 and 72)

Nonetheless, controversy continued over the election, and on April 18, 1992, the tribal governing board passed a resolution to "not recognize" the new amendments. (R. 54, p. 8 and R. 28, ¶¶ 125-128) In addition, on April 16 and 24, 1992, Gaiashkibos sent letters to defendant Brown seeking review of the decision to affirm the election results. Gaiashkibos argued that the election had not been conducted pursuant to certain provisions of the tribal constitution and that not all of the voting eligible members had been informed of the vote because of a clerical error made by the local BIA office. (R. 54, p. 8; and R. 28, ¶¶ 83 and 85)

On October 7, 1992, the defendant Matheson sent a formal reply to Gaiashkibos's April 24 letter. (R. 54, p. 9; R. 28, ¶ 92; and Appellants' Appendix, A-57) Defendant Matheson informed Gaiashkibos that the governing board had no authority to declare the election results void, but that an analysis of tribal records and BIA regulations revealed that the election was indeed flawed and therefore Matheson was revoking the prior approval of the results. Defendant Matheson explained that elections on amendments to tribal constitutions had to be conducted in the same manner as the election on the original constitution, which meant that the voters had to be of the same class. (R. 54, p. 9; and Appellants' Appendix, A-57) Defendant Matheson determined that the original 1966 vote was limited to members living on the Lac Courte Oreilles reservation or to non-reservation residents with at least 1/2 Lac Courte Oreilles blood, and that the 1992 vote was invalid because a large percentage of those members who registered did not meet these qualifications. (R. 54, p. 9; and Appellants' Appendix, A-57) In fact, his analysis of the voting list revealed that of the 650 tribal members who voted, 535 lived off-reservation and voted by absentee ballot but did not appear to have 1/2 degree Lac Courte Oreilles blood quantum. (R. 54, p. 9

and R. 28, ¶ 105) Although Matheson revoked approval of the 1992 results, he explained that the BIA was still compelled to hold an election on the two proposed amendments and directed the local BIA office to make such arrangements. (R. 54, pp. 9-10; and R. 28, ¶ 99) At this new election, however, the only Lac Courte Oreilles members permitted to vote would be those members who lived within the reservation or non-residents who had at least _ Lac Courte Oreilles blood. (R. 54, p. 10; and R. 28, ¶ 107)

For the next three years, the local BIA office and the tribal governing board were in contact about the new election but none was scheduled. (R. 54, p. 10; R. 28, ¶ 134) In July 1995, a representative of Gaiashkibos met with an official from the BIA solicitor's office to determine whether the tribe could pass a resolution enabling an election on different proposed amendments before a re-election on the 1992 proposed amendments. The BIA official drafted a proposed resolution captioned "Dismissal of Secretarial election Held February 1, 1992" and it was passed by the tribal governing board. (R. 54, p. 10; and R. 28, ¶¶ 125-126)

After plaintiffs informed the governing board that they had initiated this lawsuit, the board passed a resolution on May 19, 1997, declaring "to support the Plaintiffs in the lawsuit" but not to join the lawsuit at this time." (R. 54, pp. 10-11) However, the governing board has since revoked that resolution, asserted its sovereign immunity, and has decided not to join the lawsuit. (R. 66, p. 16)

* * *

ARGUMENT DELETED

* * *

II. THE DISTRICT COURT PROPERLY DETERMINED THAT THE TRIBAL GOVERNING BOARD IS NOT ONLY A NECESSARY PARTY BUT AN INDISPENSABLE PARTY

The district court properly determined under Rule 19 that the governing board of the Lac Courte Oreilles tribe is a necessary anal indispensable party to the present lawsuit.

a. The Tribal Governing Board is a Necessary Party

As the district court correctly noted, the determination of whether a party is necessary to a lawsuit involves a two step analysis under Rule 19. Rule 19(a) provides that a party is necessary if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

That the tribal governing board is a necessary party is almost too obvious for words. Plaintiffs want an election from almost seven years ago declared valid, and they want the tribe's constitution amended to include Amendments A and B. Both of the proposed amendments deal with matters of fundamental importance to the tribe.

Amendment A would remove any degree of Indian blood as a requirement for membership. (R. 54, p. 7; and R. 28, ¶ 49) Lineal descendency would become the new standard for membership, regardless of how minute may be the degree of Indian blood. Amendment A would also change the constituency of the elected officials.

Amendment B would double the length of the term of office for each elected member of the governing board. (R. 54, p. 7; and R. 28, ¶ 49)

The impact of these amendments on the tribe and its governing board cannot be overstated. There is no question that the disposition of the present lawsuit in the absence of the governing board as a party would severely impair and totally impede the governing board's ability to protect the tribe's interest

in its membership and in the length of the terms of its elected officials.

As the district correctly observed, should the Bureau of Indian Affairs' decision to revoke its approval of the amendments be reversed by the court in the present lawsuit, the BIA could be exposed to additional litigation. The governing board could later bring its own lawsuit against the BIA to reinstate the BIA's decision for different reasons. (Doc. No. , Opinion and Order, October 14, 1997, p. 21.) Inconsistent court orders could be the result. Rule 19 exists for the very purpose of protecting "a party against inconsistent court orders such that compliance with one might breach another." 4 Moore's Federal Practice § 1903[4][d]. There is no question that in the absence of the tribal governing board as a party, complete relief cannot be accorded among those already parties. See Rule 19(a)(1).

By its actions thus far, it is clear that the governing board is not a disinterested bystander to this litigation. It has played a key role in this controversy from the very beginning when plaintiff Sandra Thomas tried to have the governing board adhere to the membership requirements of Amendment A. If the court were to reverse the BIA's decision to revoke its approval of the amendments and grant the relief plaintiffs have requested, such that the 1992 election results approving the amendments are reinstated, the governing board as a nonparty to this action could frustrate efforts to enforce the amendments. All of these concerns support the district court's determination that the governing board. is a necessary party.

A party is "necessary" under Rule 19 (a) if either of the two conditions set forth in that rule is satisfied. Both are satisfied here. To reiterate, complete relief cannot be accorded among those already parties in the absence of the governing board as a party. Rule 19(a)(1). Secondly, the absence of the governing board as a party will impair and impede the board's ability to protect its own interest and the interest of the tribe it represents, and it would leave the defendants who are already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest. Rule 19(a)(2).

Plaintiffs' contention that the tribal governing board is not a necessary party for resolving plaintiffs' claims against the BIA simply lacks merit. In support of their argument, they have characterized their claim against the BIA as involving nothing more than the procedural question of whether the BIA violated the 45-day time restriction in 25 U.S.C. § 476(d)(1) by revoking approval of the February 1, 1992 election more than eight months after the election. (Plaintiffs' brief, pp. 16 and 20.) By characterizing their claim as procedural in nature, plaintiffs then argue that the governing board has no independent interest in this procedural requirement (the 45-day time restriction) and, therefore, it is not a necessary party. Plaintiffs' argument is far-fetched and misguided.

Plaintiffs' claims against the federal defendants do not boil down to a-simple procedural question of whether the BIA violated the 45-day time limit. Plaintiffs' claims go much deeper and are substantive in nature, as a reading of the complaint and amended complaint plainly demonstrate. What plaintiffs are really seeking is substantive relief: reinstatement of the 1992 election results and enforcement of Amendments A and B. Such relief, if granted, would have a grave and profound impact on the Lac Courte Oreilles tribe, particularly since one of the amendments would drastically alter the requirements for tribal membership. Membership has consistently been recognized by the courts as a matter of paramount importance to Indian tribes. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

As a second prong to plaintiffs' contention that the tribal governing board is not a necessary party, plaintiffs assert that the February 2, 1992 Secretarial election was a federal election and, therefore, the present dispute should be resolved in federal court, notwithstanding the absence of the governing board as a party. (Plaintiffs' brief, pages 21-23.)

Once again, plaintiffs' are missing the point. A Secretarial election is indeed a federal election but this fact alone does not automatically entitle plaintiffs to litigate their lawsuit in federal court. Plaintiffs cannot escape Rule 19 which, when applied to the facts in this case, leads inevitably to the finding that the tribal governing board is a necessary party to the present litigation. The conclusion that the Lac Courte Oreilles tribal governing board is a

necessary party to the litigation of plaintiffs' claims is unavoidable and was easily reached by the district court.

b. The Tribal Governing Board is an Indispensable Party

Upon determining that the governing board is a necessary party, the district court temporarily stayed the lawsuit to give the governing board an opportunity to waive its sovereign immunity and voluntarily join as a party. (R. 54, pp. 24-25) The court also allowed time for the plaintiffs to amend their complaint to include the governing board as a defendant, in the event the governing board did not voluntarily intervene. (R. 54, pp. 23-24.) Since the governing board did not intervene, plaintiffs amended their complaint to add not only the tribal governing board as a defendant but also each of its seven individual members, referring to them collectively as the "joined defendants." For purposes of discussion, defendants will refer to the tribal governing board and its individual members as the "joined defendants" or collectively as the governing board.

The joined defendants asserted sovereign immunity and moved the district court to dismiss them as parties for lack of subject matter jurisdiction. Since the court determined that the joined defendants were immune from suit and that plaintiffs' claims against them should be dismissed because subject matter jurisdiction was lacking, the court then had to determine whether the joined defendants were "indispensable" under Rule 19(b). If an absent party is "necessary" but cannot be joined, and if the court determines that the absent party is "indispensable," the entire cause of action must be dismissed. United States ex rel. Hall v. Tribal Development Corp., 100 F.3d 476, 478-479 (7th Cir. 1996).

Rule 19(b) is the guidepost for this analysis. That rule provides that if a party is necessary but cannot be joined,

> [T]he court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.

Rule 19(b) lists four factors to guide the court's analysis:

> [F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Recent case law -- especially that dealing with Indian tribes -- makes clear that application of these factors is to be truncated when the necessary party cannot be joined due to immunity. "It has been held that when an indispensable party is immune from suit, there is very little room for balancing of other factors set forth in Rule 19(b), because immunity may be viewed as one of these interests compelling by themselves." Fluent v. Salamanca Indian Lease Authority, 928 F.2d 542, 548 (2nd Cir.), cert. denied, 502 U.S. 818 (1991). See also, Wichita and Affiliated Tribes of Oklahoma v. Hodal, 788 F.2d 765, 777 and n.13 (D.C. Cir. 1986). As the Second Circuit has explained:

> The rationale behind the emphasis placed on immunity in the weighing of Rule 19(b) factors in that the case is not one where some procedural defect such as venue precludes litigation of the case. Rather, the dismissal turns on the fact that society has consciously opted to shield Indian tribes from suit without congressional or tribal consent.

Fluent v. Salamanca, supra, 928 F.2d at 548 (emphasis added). Thus, the interest in preserving tribal immunity, standing alone, compels a finding of indispensability and the dismissal of this lawsuit. 4 Moore's Federal Practice 19.05[2][c] n.39 (3d ed. 1997). Given the compelling interest in preserving tribal immunity, Rule 19(b)'s four part test need not be applied.

The district court in its discretion still chose to consider the four factors in Rule 19(b). In so doing, the court stated that "A brief review of these four factors establishes conclusively that plaintiff's claims cannot be adjudicated 'in equity and good conscience,' given the absence of the governing board. (R. 66, p. 16)

There can be no doubt that the district court's determination of indispensability was correct. First, a judgment granting the declaratory and injunctive relief sought by plaintiffs would be prejudicial to the governing board's interests. Almost seven years have passed since the election, and Amendments A and B have never been implemented by the tribe. Obviously, a judgment reinstating the election results and amending the tribe's constitution to include Amendments A and B would not only affect directly the term lengths of the board members but would alter the requirements for membership in the tribe. Courts, including the U.S. Supreme Court, have consistently recognized the paramount interest of Indian tribes in all matters relating to membership, just as they have consistently recognized the sovereign immunity of tribes on such matters. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

To date, the amendments have not been implemented. (R. 28, ¶ 84, Exhibit N) If the amendments are now declared approved and such approval is deemed effective retroactively to a date 45 days after the February 1, 1992 election, as plaintiffs have requested, this result could call into question the validity of the make-up of the board during the intervening years. It could be argued, for example, that during those years the board was not properly elected because potentially eligible members were not given an opportunity to vote. It could also be argued that the Board members elected at any time after the February 1, 1992 election were elected for incorrect terms of office, since they were elected for only two-year terms instead of four-year terms.

Calling into question the make-up of the board necessarily calls into question the very validity of all of the board's decisions and actions during those years. Such a result would create chaos and would be a disaster for the tribe. Clearly, the granting of the specific declaratory and injunctive relief sought by the plaintiffs would be extremely prejudicial to the tribal governing board, as well as the tribe it represents.

Second, the district court correctly determined that prejudice to the governing board cannot be avoided through a careful shaping of relief. The relief that plaintiffs are seeking is reinstatement of the 1992 election results, i.e., enforcement of Amendments A and B. The amendments are not subject to modification, and there is simply no way to lessen or avoid the prejudice that would result to the governing board and to the entire tribe it represents if the amendments are enforced.

Third, a judgment rendered in absence of the governing board as a party would not be adequate, since it would not take into consideration the governing board's position on the merits. The district court appropriately observed that "Any measurement of its view of the merits would be speculative." (R. 66, p. 16)

Concerning the fourth and final factor, the district court correctly determined that it, too, points in favor of dismissal of this lawsuit. The fourth factor concerns whether the plaintiffs will have an adequate remedy if the lawsuit is dismissed for nonjoinder. Granted, it may be that plaintiffs will have no other remedy should their claims in this lawsuit be dismissed. Nevertheless, to allow the lawsuit to proceed for this reason alone would render meaningless the firmly recognized principle of tribal sovereign immunity. As the district court held, "Permitting this suit to move forward even though tribal immunity remains intact would send the false signal that the federal courts, not tribal polling booths, are an appropriate place for different tribal political factions to settle their disputes." (R. 66, p. 17)

Defendants are not arguing that the governing board would be an indispensable party to the litigation of any and all claims plaintiffs conceivably could have brought, arising from the 1992 election. Defendants are only contending that the board is indispensable with respect to the particular claims for relief plaintiffs chose to bring in this case. It is important to note that in

the present lawsuit plaintiffs are not seeking declaratory relief as to the correct class of voters who should be eligible to vote if a new election on Amendments A and B were to be held. Nor are they seeking mandamus relief to compel the Secretary to hold a new election for the correct class of voters. Plaintiffs do not want a new election. They want the 1992 election results declared approved and Amendments A and B implemented. Such a suit should not be permitted to proceed, in light of the tribe's sovereign immunity, even if dismissing the suit will leave plaintiffs with no other mechanism for resolving their present claims.

* * *

ARGUMENT DELETED

* * *

\CONCLUSION

For the foregoing reasons, the government respectfully requests that the judgment of the district court be affirmed.

Dated this 31st day of August, 1998.

Respectfully submitted,

PEGGY A. LAUTENSCHLAGER
United States Attorney

By:

/s/
RICHARD D. HUMPHREY
Assistant U. S. Attorney